For: Monday, **April 27, 2015**, City Council Meeting

Advance Packet Information

Dated: April 20, 2015

Included in this packet is documentation to support the following Agenda items:

PUBLIC HEARINGS

1. Continuation of File ANX-1-14, consideration of the applicant's response to the Land Use Board of Appeals remand to the City Council regarding the annexation of tax lots 1500 and 2000, located on Assessor's Map 40-13-32D, into the City of Brookings. [Planning, pg. 2]
   a. Exhibit D; Yvonne Maitland Submission of April 13, 2015 [pg. 5]
   b. Excerpt from the 2014 Brookings Water Master Plan [pg. 17]
   c. Excerpt from the 2014 Oregon Fire Code [pg. 21]
   d. Applicant's findings [pg. 22]
   e. Draft final order [pg. 31]

*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, or at City Hall. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least ten days advance notification. Please contact 541-469-1102 if you have any questions regarding this notice.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: April 27, 2015

Originating Dept: PWDS -Planning

Donna Colby-Hanks
Signature (submitted by)

City Manager Approval

Subject: Addendum to April 13, 2015 staff report to address issues raised by participants to Applicant's responses to Land Use Board of Appeal's remand to the City's approval of annexation, File No. ANX-1-14, tax lots 2000 & 1500 on Assessor's Map 40-13-32D; approximately 13.33 acres, adjacent to the Chetco River into the City of Brookings.

Recommended Motion: A motion to approve the Applicant's responses to the issues raised by Oregon Land Use Board of Appeals (LUBA) Remand; Third Assignment of Error, the availability of the City water supply to serve the annexed territory relative to capacity and Fourth Assignment of Error, Statewide Planning Goal 16 (Estuarine Resources) for File ANX-1-14 requesting to annex two tax lots comprising of approximately 13.33 acres of land into the City of Brookings as well as approve the Remand Final Order with original conditions of approval.

Financial Impact: Approximately $1,100 in additional taxes prior to development of the subject property.

Background/Discussion: City Council conducted a public hearing on April 13, 2015 to consider the applicant's responses to LUBA's remand regarding the availability of city water to serve the annexed territory relative to capacity. After closing the public hearing, City Council directed Staff to review the exhibits submitted and provide an addendum staff report to respond to any issues raised regarding the availability of water relative to capacity. Final action was continued to April 27, 2015 to allow for staff's review.

The following responses are provided by Loree Pryce, PE, Public Works and Development Services Director, and registered professional engineer.

Catherine Wiley, Exhibit B-2

Excerpt from Public Facilities Plan(PFP) "although a portion of the 12-inch AC piping from the intake to the treatment plant is questionably undersized for the flow rate (of 5.7 cfs)"
RESPONSE: A 12-inch main can convey 5.7 cfs and stay under the maximum recommended pipe velocity of 10 feet per second. In time, it is recommended to replace the AC main as the City would with any AC water main due to age, and being an obsolete pipe material. Replacing or upsizing this 12-inch line is not necessary for conveyance capacity to the Tribble development.

The Water Masterplan (WMP) and the PFP document the distribution system being overextended in higher elevations and not capable of delivering fire flows.
RESPONSE: The Tribble property would be served from the base zone (lower elevation) which has adequate storage capacity and conveyance to serve the project.

The WMP, PFP and Goal 11 do not consider the water needs of Lone Ranch or the annexed airport properties.
RESPONSE: Lone Ranch prepared an infrastructure improvement study roughly 10 years ago which indicates all the needed infrastructure improvements required by this developer to serve their project. The Lone Ranch developer will be required to make improvements on the pipe conveyance system to accommodate their project. The Airport project will include a 0.5 MG storage tank and pipe conveyance for any future demand. The tank and pipe conveyance was sized for future development and fire flow needs.

Residential water pressure of 20 psi is required.
RESPONSE: The City has complied with OAR 333-061-0025 and maintains a minimum of 20 psi pressure at all times in the distribution system.

The WMP and the PFP document inadequate reservoirs.
RESPONSE: The City currently has more than adequate storage capacity. Please refer to page 6-9 of the Water Master Plan 2014 **(Attachment B).** The existing storage capacity of 3.5789 MG exceeds the fire code requirements of 3 times the average day demand (ADD) + fireflow.

Water needs of Salmon Run Golf Course and transfer of point of diversion of City water.
RESPONSE: The former operator of the Salmon Run Golf Course requested city water service in 2006. The City secured a permit for an additional, temporary point of diversion within its existing water right allocation in anticipation of providing Salmon Run with water service in 2013. A new operator assumed control of Salmon Run Golf Course in 2014 and has advised the City that they do not require city water service. The additional point of diversion would have been developed under the City's existing water right. There are no plans to develop this additional point of diversion and the temporary additional point of diversion permit expires in 2018.

No documentation for anticipated water need for wildfire management.
RESPONSE: The Tribble property does not meet the definition of a wild fire risk area as defined in the Oregon Fire Code.

The City has not considered essential water needs for the Harbor District in the City Water Conservation Plan.
RESPONSE: The facilities operated by the Port of Brookings are served by the Harbor Water District. The Harbor Water District has water rights and operates their system independently of the City of Brookings.

Sean Malone, Counsel for ORCA, Exhibit B-3

There has been no accounting for saltwater intrusion.
RESPONSE: There is no evidence of salt water intrusion in Brookings water intake at the Ranney Collector. In September 2014 during record low levels of the Chetco River, the City monitored conductivity levels which were inconclusive. As a precaution, an independent lab was contracted in Grants Pass to perform a separate salinity test. The result showed the intake was not affected by salt water intrusion.

Water needs of Lone Ranch MasterPlan not considered.
RESPONSE: See response to same issue above.

In addition there are some important details to note.

Per the 2014 WMP, the water rights at the Ranney Collector (5.57 cfs) are currently used for municipal water production. Currently 1.0 cfs has been temporarily transferred (will expire in 2018) leaving 4.57 cfs available at the Ranney Collector. This equals 2.9 million gallons per day.

The additional details above, have been included in revised findings in the draft final order (Attachment E).

Considering all analysis, findings, and evidence in the record, Staff recommends adoption of Applicant's proposed findings.

Policy Considerations: None.

Attachment(s):
A. Exhibit D, submitted by Y. Maitland at 04/13/15 hearing
B. 2014 Brookings Water Masterplan, pages 6 - 9
C. Fire code "Wildfire risk area"
D. Applicant's findings
E. Draft final order

Exhibit D

Yvonne Maitland
15676 Oceanview Drive
Harbor, OR 97415
(541) 412-1200

April 13, 2015

Re: File ANX-1-14 LUBA Remand for Mahar/Tribble Development.

Dear Mayor Hedenskog and Council,

Luba Remand - Third Assignment of Error:

To address the 'availability' of water to 'relative capacity' and to determine the adequate levels of water supply that are available to the City and the reason that "water remains an issue which must be resolved" (Public Works Director) is because the Chetco River is limited for Water Quality, Temperature, and Low Flows and Habitat modification. Designated as an Essential Salmon Habitat area it supports federally threatened SONCC coho salmon. Low water flows in the Chetco have not been addressed.

Under Statewide Planning Goal 5, Natural Resources… implementation: Stream flow and water levels should be protected and managed at a level adequate for fish. Natural resources should consider as a major determinant the carrying capacity of water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

The city, in relevant part defines adequate level of urban services to include 'water service' that meets the requirements in the city's Public Facilities Plan. The PFP has been amended multiple times to the extent that all reference to the significance of the Chetco fish resources was removed.

At the joint Curry County and City of Brookings Joint Management Agreement hearing, June 10, 2010 I commented on the City's proposed 9 page PFP document but was unable to obtain it from the city for this evening's hearing. The following statements are included below and in the two – 1 page attachments regarding the policies below.

Issue #2 Water Withdrawals from the Chetco River: To satisfy the remand, the City and County have each adopted virtually identical urbanization policies. **Findings; that recognize that the fish resource of the Chetco River is significant; that planned population growth and development within the UGB and its planned water withdrawals are uses which conflict with the resource**… (DLCD policy was included in the Public Facilities Plan for the Urban Growth Expansion.) (W&H Pacific Inc.)

ATTACHMENT B

AMENDMENTS TO COUNTY PLAN POLICIES

Document: Curry County Comprehensive Plan

Section: 14.8 Plan Policies Regarding Urbanization

Policy Added to the Plan (To be Adopted)

15. Curry County in conjunction with the City of Brookings and the Harbor Water District will develop alternatives to water withdrawals from the Chetco River during the later summer months to address the needs of the fish resources in the development of the Public Facilities and Services Plan for the City of Brookings Urban Growth Boundary. The development of the alternatives to water withdrawals will include the following items.

    a) Findings that recognize the fish resource of the Chetco River is significant; the planned population growth and development within the UGB and its planned water withdrawals are uses which conflict with the resource; and the county, city, and special district will consider alternatives and develop a program which will limit the conflicting uses to the extent that they will not negatively impact the fish resource.

    b) The consideration of alternatives and development of a program to limit the conflicting uses will include an analysis and findings on the economic, social, environmental and energy consequences of the decision to allow, limit or prohibit the conflicting uses as required under Statewide Planning Goal 5.

    c) The program to limit the conflicting uses will be specifically state how the reduction in water withdrawal from the Chetco River will be attained and have implementing measures with clear and objective standards. The implementing measures will be adopted as ordinances or regulations by the agencies that control water usage within the UGB.

Expert: There may not be enough Chetco water to go around

By Peter Rice
Pilot Staff Writer

Think of the Chetco River as a pie.

All sorts of people in southern Curry County have legal rights to slices of that pie. Healthy slices, in the form of official water rights, go to the City of Brookings and the Harbor Water District, and they pipe the water into thousands of homes and businesses. Smaller slices go to approximately 70 individual wells that either pump water directly out of the river or use ground water that is replenished by the river or one of its tributaries. A slice is also reserved for the river itself, to maintain good fish habitat.

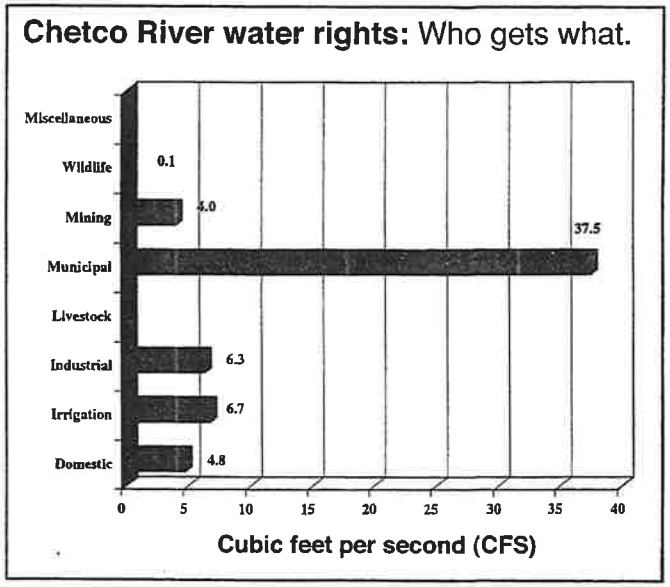
One slice even goes to an old mining operation upriver, according to Ivan Gall, a hydrogeologist with the Oregon Water Resources Department.

In the winter, he told the Chetco Watershed Council Thursday night, there's plenty of water to go around.

But in the summer, he said, it's quite possible that the pie just isn't big enough.

In other words, if the Chetco users actually took as much water out of the river as they are legally entitled to, and you asked a fisheries biologist to evaluate what was left, "You'd probably be well below what that biologist would say is a healthy flow for that stream," Gall said.

"We do have some concerns about water allocations on the Chetco," said Todd Confer, a fisheries biologist with the Oregon Department of Fish and Wildlife. As the years go by, he said, "there's potential for flows to be significantly lower than they need to be to maintain healthy populations of salmonids."



Graphic courtesy of Wouth Coast Watershed Council

Currently, the two large users – Brookings and Harbor Water – aren't taking all the water they have rights to. Brookings, for instance, uses around five cubic feet per second but has rights to around 20.

Growth could change those numbers over the years, and in the meantime, the State of Oregon is still issuing some water rights permits to outlying users who can show they have no other choice but to tap into the Chetco watershed. These permits only allow for human consumption, Gall said, but could potentially add up all the same.

"The flows you see today are about as good as they're going to get," Gall said.

So as the years go by, there's going to be less and less water available, a problem that will be acute mainly in the summer. But as flows decrease, the conflict between users has the potential to increase.

In one corner, landowners large and small may want to exercise their personal property rights and build some houses that will need a water supply. How much of a water supply isn't clear, though, if a large portion of new homes are second homes only occasionally occupied.

In another corner, people placing a high value on healthy fish stocks may have different ideas. Salmon and steelhead also form a major part of the area's economy, but it all hinges on good river flows.

The Chetco Flow

Lowest Recorded: 42 cubic feet (300 gallons) per second. Or roughly the same capacity as two or three large freezers.

Highest Recorded: 76,000 cubic feet (568,519 gallons) per second. Or 87 percent of the water in an Olympic swimming pool.

– Oregon Water Resource Department.

One potential solution to this crunch is to store winter water for the drier summer months, but Gall is pessimistic about this possibility.

The geology of the South Coast isn't conducive to storing large amounts of water in aquifers: "It's miserable stuff we got," he said.

Other water storage solutions – big water towers, dams and the like – might be technically possible, but would come with high price tags and controversy attached.

Conservation efforts – such as constructing gray water systems or fixing leaky municipal water pipes – may be less controversial, but no less expensive.

Some efforts are already in place. The city of Brookings has a voluntary agreement with the Oregon Department of Fish and Wildlife to implement quick conservation efforts if Chetco flow gets below certain levels, according to Dale Shaddox, the city manager.

But in general, the water problem needs some discussion, according to Bill Yocum, the chair of the Chetco Watershed Council. The council will be batting the issue around more, he said, also suggesting that the city of Brookings set up a meeting with all of the major water users.

For his part, Shaddox didn't quite commit to organizing a summit, but did agree about the discussion part.

"It's going to take everybody working together on the water issue," he said.

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The Chetco Watershed Council meets the first Wednesday of every month at 7 a.m. in the basement conference room of the *Curry Coastal Pilot*, 507 Chetco Ave., Brookings.

For more information, e-mail Bill Yocum at freemanrockinc@wave.net.

For a copy of the November meeting minutes, e-mail requests to price@currypilot.com.
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Yvonne Maitland|
15676 Oceanview Drive
Harbor, OR 97415
(541) 412-1200''

April 13, 2015

Re: File ANX-1-14 LUBA Remand for Mahar/Tribble Development.

Dear Mayor Hedenskog and Council,

I wish to respond to the City of Brookings LUBA Remand issues and the action the City of Brookings, Mayor and Council have taken to prevent citizens and others from commenting on Remand issue 2, Goal 16 Estuarine Resources. The City claims, "This remand issue is not evidence based in that there is substantial evidence in the record to support sufficient findings. Therefore a public hearing is not required." If there was substantial evidence in the record as the City claims, LUBA would not have required this particular remand.

LUBA Judges concluded that, "City findings were inadequate to demonstrate compliance with Goal 16." The Mayor and Council intend to address this issue at the City meeting/public hearing. What is so disconcerting is that failure to raise an issue precludes an appeal to LUBA. Is the City proposing to deny interested parties the right to speak and the right to appeal? Public interests should be the starting point when considering development in a flood and tsunami zone and landslide area.

Attorney O'Connor included 2 ½ pages of new evidence in response to the LUBA Remand – Statewide Planning Goal 16 (Estuarine Resources). "The approval of the application will not alter the Chetco River estuarine ecosystem and that the estuary resources will be protected." This conclusion is as vague as the City findings that concluded "the application has taken appropriate precautions." NOAA/NMFS disagree and concluded the development of lots will adversely affect NMFS trust resources. It is important to note that the comments and letters provided at the September 8, 2014 hearing were not addressed by the City Council.

Intact floodplains provide critical flood storage capacity, protect water quality and provide habitat for salmon. Development in floodplains jeopardizes listed species. The Chetco River is an Essential Fish Habitat area for SONCC coho salmon, a federally threatened species under the Endangered Species Act. The river is temperature impaired and on the 303d list of the Clean Water Act.

Level of Development: The proposed high-density, urban development of 59-residential units on a 13.33 acre parcel in the Chetco estuary appears as part of a gravel bar in the 1950's. [Aerial photograph attached] In 1939 the development site was a cultivated field adjoining a gravel bar. [Chetco River Oregon, Entrance To Tide Rock-1939 map attached] The property has been filled consistently throughout decades and now more engineered fill has been dumped onto the land to raise it above flood level.

Fourth Assignment of Error Goal 16 – Implementation Requirement 1. States in part that actions which would potentially alter the estuarine ecosystem shall be proceeded by a clear presentation of the impacts of the proposed alteration, and other activities which could affect the estuary's physical processes or biological resources. Furthermore, the impact assessment states, "**it should enable reviewers to gain a clear understanding of the impacts to be expected.**"

The applicant addresses navigation but ignores most of the listed requirements in the assessment, including 'living resources.' NMFS Recovery Plan identified a lack of rearing habitat as the primary limiting factor to coho viability in the Chetco. This large scale development in a floodplain within the estuary will diminish the habitat and recovery of coho. A reasonable person would conclude that the applicant has not provided a clear understanding of the impacts to be expected from the proposed development activities.

Management Units - GOAL 16
1 Natural, "all estuaries areas shall be designated to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research and educational needs. These shall be managed to preserve the natural resource in recognition of dynamic, natural, geological and evolutionary processes."
This Natural Plan designation applies to the small natural area of the slough in Snug Harbor, the only area of this type on the estuary.

Ferry Creek:
"Any future restoration of Ferry Creek could potentially impact estuarine resources but there are sufficient safeguards in place…" (Memorandum March 10, 2015)

Previous Requests and Decisions:

February 28, 2006], ODFW "**We would like to see the majority of the fill within the riparian setback to be removed…** ODFW would like to see the culvert removed and a natural channel reestablished. This may result in a reduced riparian setback along Ferry Creek."

February 27, 2008, ODFW "It is agreed that ODFW will accept your proposed riparian **setback of 50 feet… along the entire property**.
It is my understanding that the Ferry Creek culvert will be pulled in the summer of 2008 and **any future crossings will utilize a bridge"**.

January 7, 2009. Dave Perry DLCD, "**It is not clear why the applicant would need to encroach into the river setback area… We recommended the request be denied.**"

March 26, 2009, Curry County Planning Commission **denied the Mahar/Tribble application** AD-0831. The applicant requested a variance from the Chetco

River 75 foot riparian setback and 38 lots/units. **ODFW agreed to a 50 foot setback reduction.**

August 12, 2009, City of Brookings pre application meeting notes: "Only 45% coverage of the subject property with structures is allowed in the R-3 zone. **Applicant indicates over 50% of the property would be left in 'open area'".** The previous bridge proposal and 50% of the property to be left in open space, clearly suggest serious constraints exist on the property.

The above examples show an interesting process and progression whereby the owner received a 50 ft variance from ODFW to 'daylight' Ferry Creek. Does the applicant intend to restore the streambed or does he expect others to do the restoration for him? The answer: "The owner of the subject property has also expressed a willingness to restore the streambed. However, it is important to note that there is no requirement that the owner restore the streambed. Furthermore, the restoration of the streambed is not required for the development of the subject property.... In the event the Ferry Creek stream restoration occurs." Could this prove problematic for the applicant, in regard to the riparian setback for Ferry Creek?

Mayor Hedenskog and City Council amended Goal 14 (Urbanization) October 18, 2010. Text to be omitted has strike through. Findings: The remaining acreage... located within ~~**the Chetco River floodplain cannot be developed**~~, has constraints that must be dealt with prior to development. [Attachment Goal 14 amended]
So, here we are in 2015 with the city poised to approve this questionable, high density Mahar/Tribble development. I request that my comments be placed in the record.

Thank you.

Sincerely,

Yvonne Maitland

Yvonne Maitland

Attachments:

1. Aerial photograph of location
2. Entrance to Tide Rock and location of property (2 pages)
3. Attachment Goal 14 amended 2010
4. Colored photographs of flooding (2)

Attachment B

DRAFT

Proposed text in ***bold and italicized*** type.
Text to be omitted has ~~strikethroughs~~.
Oct. 18, 2010

GOAL 14 URBANIZATION

GOAL:

To provide for the orderly and efficient transition of land within the Urban Growth Boundary from rural to urban uses.

FINDINGS:

1. The city expanded its Urban Growth Boundary in 1995 to include land needed to accommodate projected growth through the year 2015. The boundary expansion consisted of a total of 3,491 acres, of which 1,263 acres is developable land. The remaining acreage is either steep hillsides or located within the Chetco River flood plain and ~~cannot be developed~~. ***has constraints that must be dealt with prior to development.*** (See Urban Growth Boundary Map)

2. Pursuant to Oregon Administrative Rules and Goal 14 of the State planning law, a need's assessment based on 1993 data, analyzing projected population growth and the amount of residential, commercial and industrial land needed to accommodate growth to the year 2015, was completed and adopted by the City Council and County Commissioners.

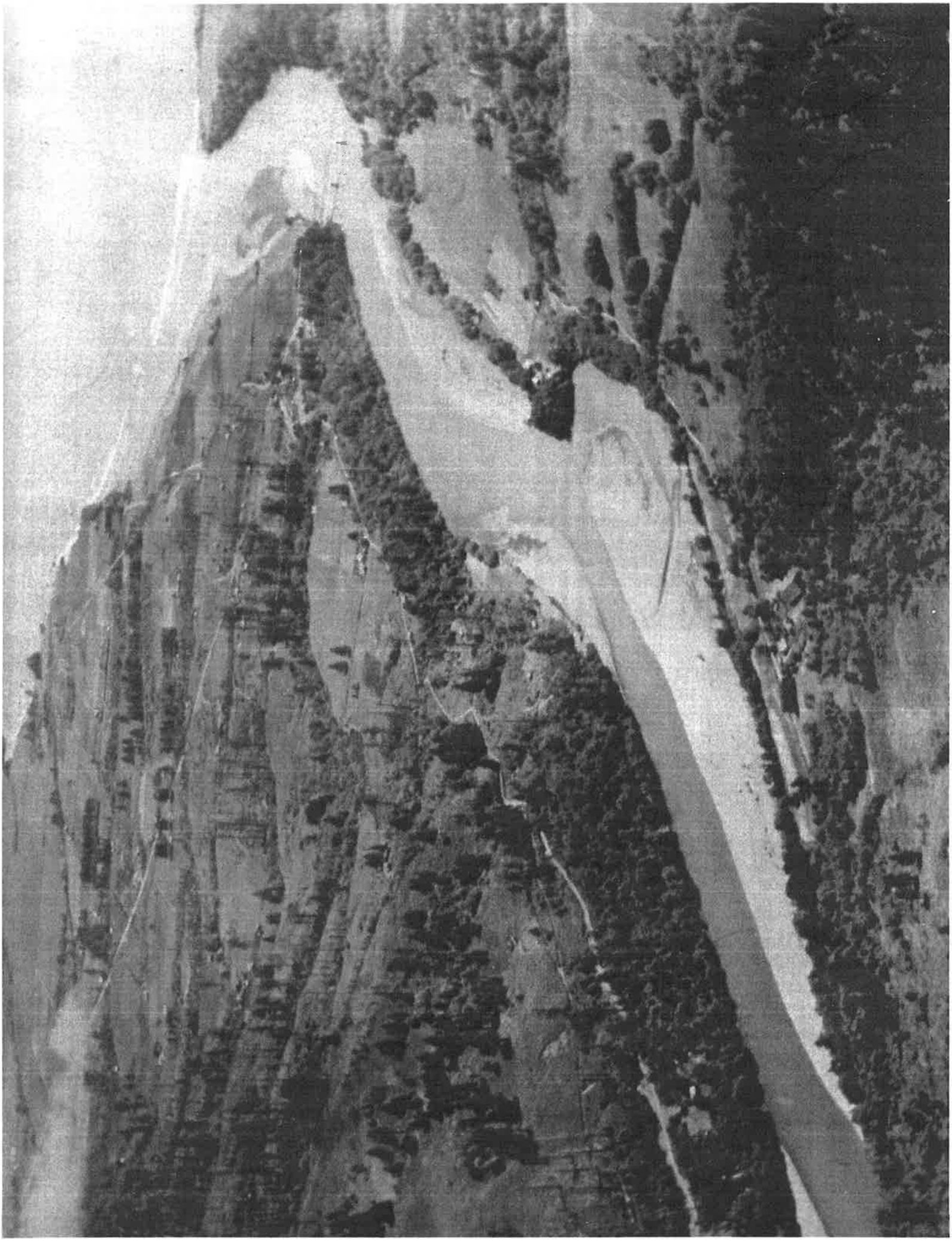
3. A ~~new~~ ***City/County*** Urban Growth ~~Boundary~~ ***Area*** Joint Management Agreement (JMA) has been adopted by both the City and County. Provisions of this document include:

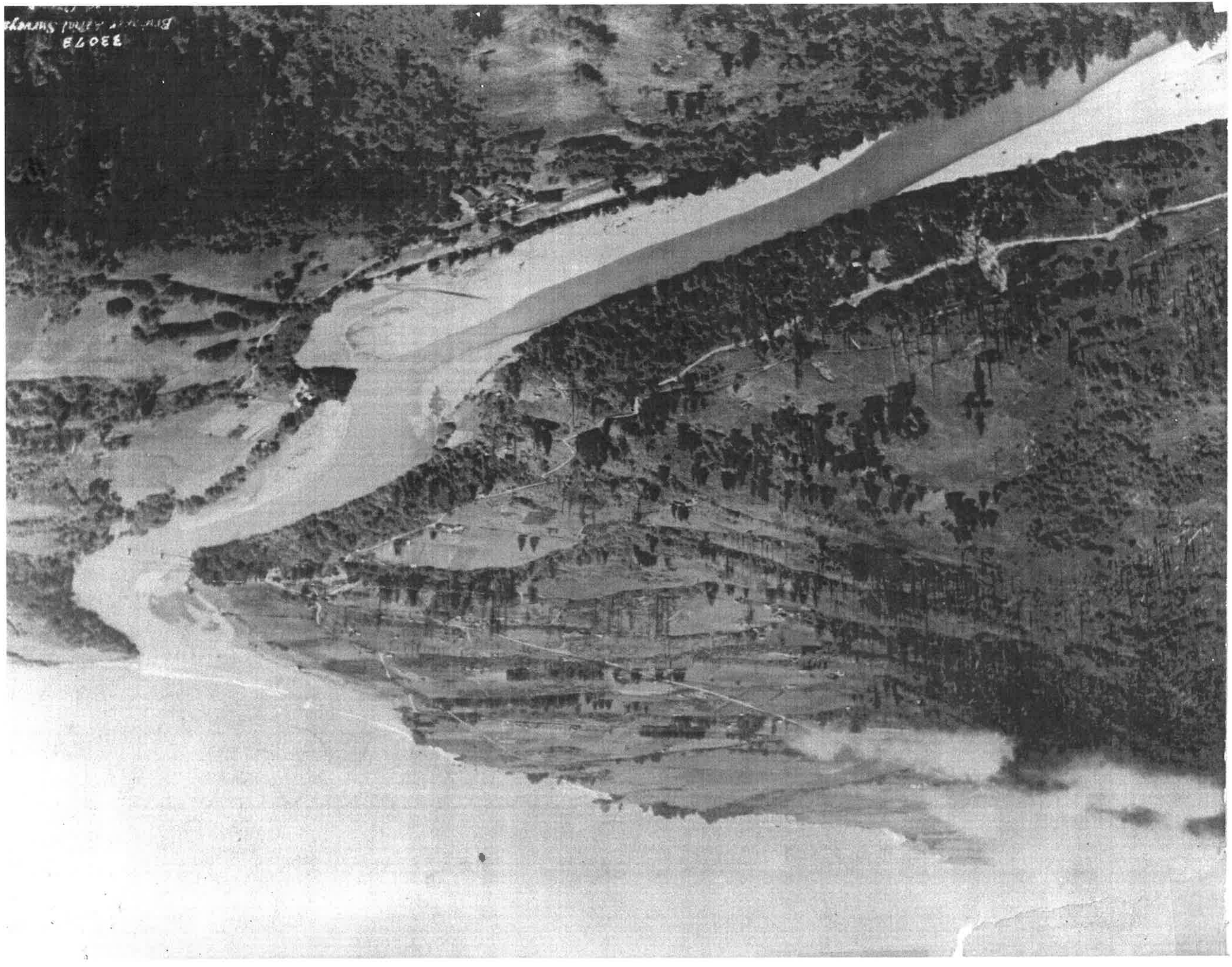
   A. The ability of the City to comment on all land use actions within the Urban Growth Boundary under application to the County, prior to any decision on that application.

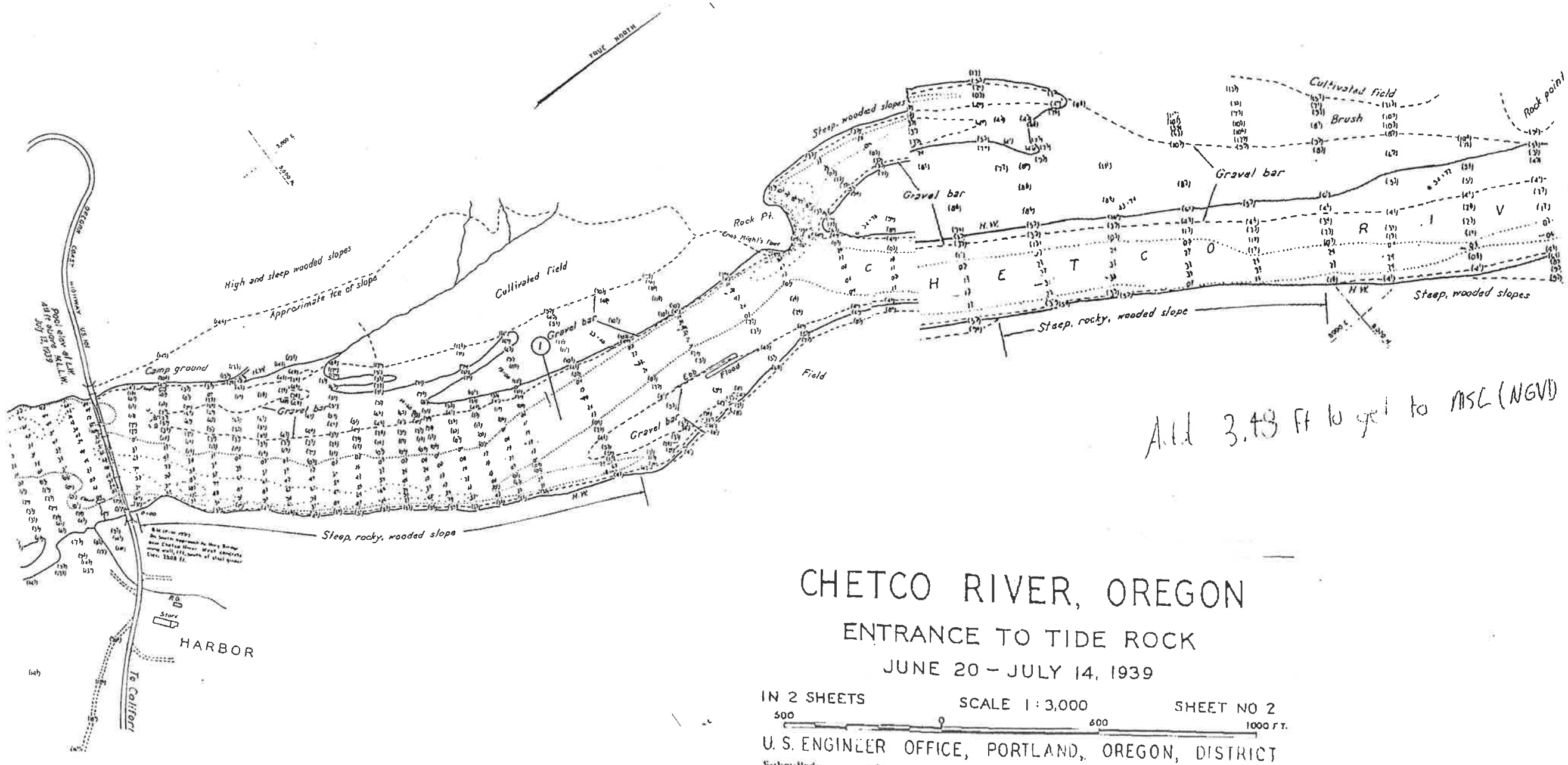
   B. Lots within the Urban Growth Boundary cannot be divided ***to urban densities*** until both water and sewer services are available to the lot.

   C. Street standards within both the city and Urban Growth Boundary will be compatible.

12/21/2014







Add 3.43 Ft to get to MSL (NGVD)

CHETCO RIVER, OREGON

ENTRANCE TO TIDE ROCK

JUNE 20 – JULY 14, 1939

IN 2 SHEETS SCALE 1:3,000 SHEET NO 2

500 0 600 1000 FT.

U. S. ENGINEER OFFICE, PORTLAND, OREGON, DISTRICT

Submitted:

.....
Engineer

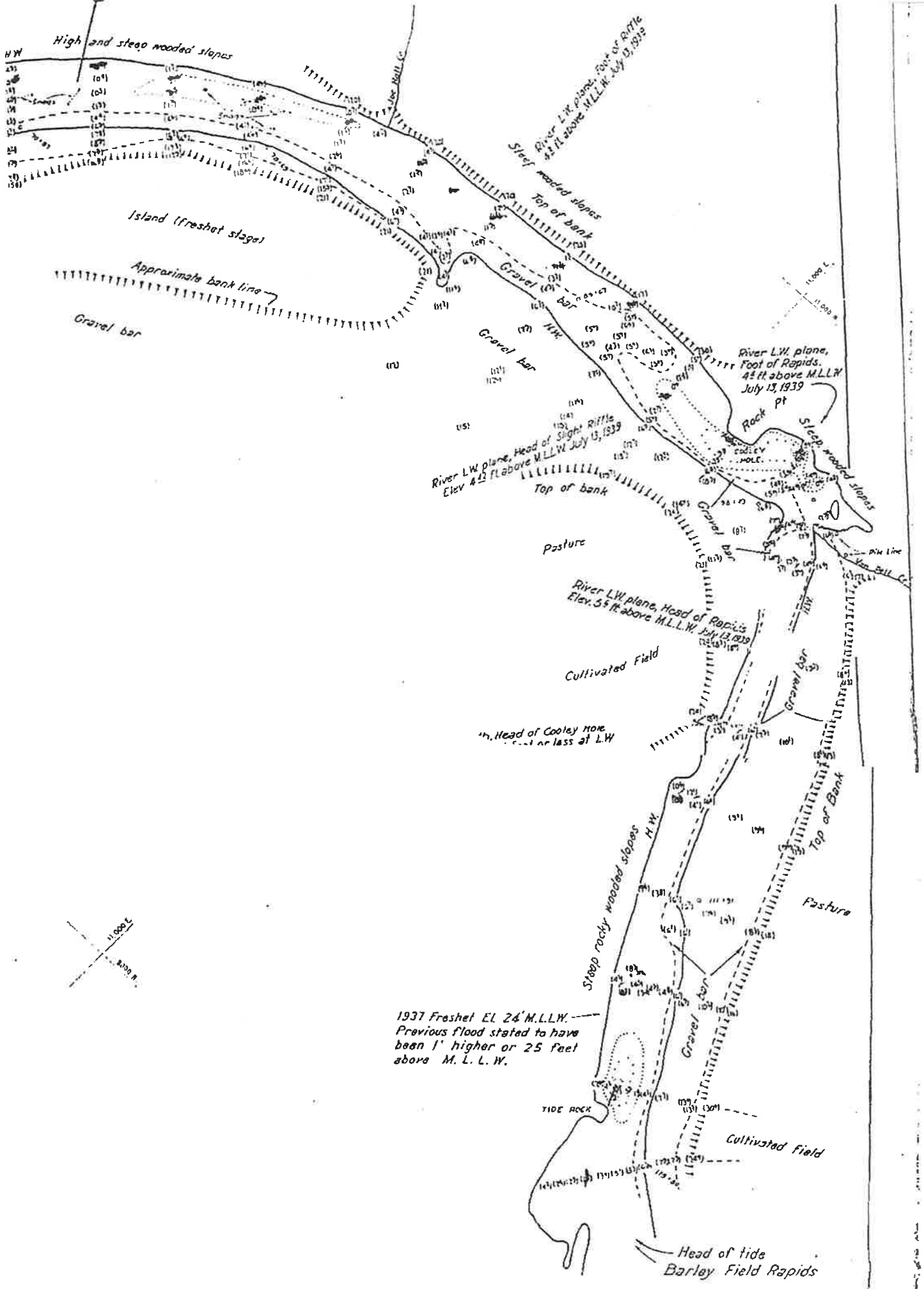
Recommended:

.....
Principal Engineer

Approved

.....
Major, Corps of Engineers
District Engineer

Surveyed: O. H. G. Drawn: J. B. - F.C. Checked: C. F. S.



NOTES:

Soundings are in feet and indicate depth at M.L.L.W. with reference to Chetco Cove.
Elevations, in feet, are in parentheses thus (2) and indicate height above M. L. L. W
Mileage above mouth is shown thus ②
Bluff line is shown thus
Submerged rocks shown thus ⊕
Small rocks above low water shown thus +
The 6 foot depth curve is shown thus
" 12 " " " " " "
" 18 " " " " " "
" 24 " " " " " "
" 30 " " " " " "

CA-1-1/72
K-12-3/58

CHETCO RIVER, OREGON

ENTRANCE TO TIDE ROCK

JUNE 20 – JULY 14, 1939

IN 2 SHEETS SCALE 1:3,000 SHEET NO 2

500 0 500 1000 FT.

U. S. ENGINEER OFFICE, PORTLAND, OREGON, DISTRICT

Submitted: A. G. Butler, Engineer
Approved: C. Kenyon, Major, Corps of Engineers, District Engineer
Recommended: N. E. Dickson, Principal Engineer
Surveyed: O. H. G. Drawn: J. B.-P. G. Checked: G. F. S.

7123 CH-1-6/2

The magnitude of the project is such as to require funding assistance through one or more of the State or Federal Financing programs. These typically require a preliminary engineering report and environmental report relevant to the project as part of the overall funding application and approval process.

A preliminary engineering report (PER) will be needed to refine the project scope, elements, design, and costs including specific operations, maintenance, and replacement costs. An opinion of probable cost for preparing the PER is $50,000. The environmental report (ER) will add a minimum of $10,000 to the cost.

RESERVOIR STORAGE

For the water system as a whole, the recommended storage capacity is three times the average day demand (3xADD) plus fire flow (FF). Recommended FF is 3,500 gpm for 3 hours (0.63 MG reserve). The table below projects storage capacity for the City as a whole. With the addition of the Airport Reservoir, the City will meet the projected year 2023 storage capacity needs.

Projected City Reservoir Capacity Needs

	Average Day Demand (ADD) (mgd)	3x ADD (mgd)	Reservoir Volume Needed at 3xADD + FF (MG)	Existing Reservoir Volume (MG)	Additional Volume Needed (MG)
City Total 2013	0.9	2.7	3.33	3.43	-0.10
City Total 2023	1.1	3.3	3.93	3.43	0.50
City Total 2033	1.3	3.9	4.53	3.43	1.10

Old County service area is the largest higher level service area in the City and highly deficient in storage capacity. A new reservoir is needed to provide the additional storage required. A nominal capacity of 250,000 gallons is recommended. Sites for the proposed reservoir are limited. Potential sites have been discussed with City staff. It is recommended that these sites be further researched and the most suitable site or easement be acquired. The opinion of probable cost for the reservoir is $860,000.

Operation of the Seacrest Reservoir has been problematic. An altitude valve installed at the 1.5 MG Reservoir would allow better overall utilization of Seacrest Reservoir by effectively taking the 1.5 MG Reservoir off-line at times to allow for filling and better cycling of water through Seacrest. An opinion of probable cost for the construction of an altitude valve, vault and connections is $87,000. The project will be most effective once the recommended supply improvements have been implemented.

More efficient cycling of water through Seacrest could alleviate some of the water quality concerns in the northwest area, especially if paired with a recommended distribution improvement that reduces the length of the deadend line to Lone Ranch.

Additional reservoir improvements are included in the CIP.

DISTRIBUTION

An assessment of Brookings' needs was developed primarily through map review, review of previous Master Plan recommendations that have not yet been constructed, and information from staff on problem areas. The focus has been on lines with additional concerns such as main break frequency, need for looping to eliminate dead-ends, and general hydraulic and fire protection needs. The CIP includes approximately 30 recommended distribution improvements; total cost is $6,160,000.

Fire protection concerns and needs were reviewed with Jim Watson of the Brookings Fire Department. Recent City main improvements in the southwest part of the City have alleviated many areas of concern, but one area of the City still stands out as being a serious concern. The area of concern focuses on Moore Street (west of Arnold Lane) where development is large and dense and fire flow is limited through a dead-end 6-inch main. Hub Street and Iris Street, immediately south of Moore, are also underserved through a long looped 4-inch main. The opinion of probable cost for improvements in this area is $462,000.

Unaccounted-for water losses currently total 10% and indicate that the water system does not have excessive losses; nevertheless, periodic leak detection should be conducted to maintain or even reduce the water loss figure. Replacement of leak prone lines should also reduce water losses as well as O&M costs associated with emergency main repairs.

BOOSTER PUMPING

Comprehensive upgrades are needed for Mountain Drive #1, #2, and #3 pump stations. From an electrical and controls standpoint, the facilities have been upgraded several times but not with any kind of consistency or coherent plan. Controls, starters, and other key electrical components should be upgraded according to a coherent plan. To achieve this, all three pump stations should be addressed as part of one project. Consideration should also be given to pump replacement and the provision of redundant pump capacity in Mountain Drive Pump Station #3. Anticipated project cost is $188,000.

The 1.5 MG Reservoir Pump Station is actually two separate pump stations: one pumping to the Old County service area and one pumping to the Pacific View service area. The Old County pumping system needs a capacity upgrade to approximately 300 gpm plus a third pump. A new pump station is needed to provide firm capacity (3 pumps) and the increased capacity for the "Old County" system. The part of the station that serves Pacific View is adequate from a capacity standpoint and does provide firm capacity; however, given the overall age and condition, it would be prudent to include its function in the proposed new 1.5 MG Reservoir Pump Station. Constructing a new pump station will allow the old station to remain in operation with minimal complications and down time during the transition from the old to the new system. An opinion of probable cost for the proposed new 1.5 MG Reservoir Pump Station is $675,000.

CAPITAL IMPROVEMENT PLAN (CIP)

The Plan includes a detailed CIP provided in a spreadsheet format. The CIP includes approximately $12,000,000 in recommended improvements exclusive of the water supply improvements which add approximately $4,000,000 - $14,000,000 depending on which alternative is selected. Costs in the CIP can be easily updated by simply entering the current Engineering News Record Construction Cost Index (ENRCCI) number.

OPERATIONS AND MAINTENANCE (O&M)

Most of the recommended capital improvements will not result in increased O&M costs; however, O&M costs are subject to market changes and inflationary pressures, so annual increases are typically required. Budgets and water rates are typically adjusted to take recent or anticipated changes into account; however, system deficiencies that have not been addressed can increase O&M costs in ways and to an extent not easily foreseen. This may take the form of emergency (overtime) call outs and extra cost, interim measures that may be needed until the problem can be addressed correctly, and un-budgeted emergency projects of potentially significant expense. Over time, such costs can add significantly to the overall utility budget.

From an O&M standpoint, there are additional tasks that the City could and should be doing (such as valve exercising). As the City emerges from the recession, the City should budget for, and hire, one additional FTE for the water utility. Ideally the new hire will be certified for both distribution and treatment so as to provide more operational flexibility in scheduling. Actual need may exceed the one FTE recommended; the City should periodically assess staffing adequacy and add staff as warranted so as not to compromise the level of service provided.

WATER RATES AND RATE IMPACTS OF PROJECT FINANCING

The City of Brookings current water rates are divided into two categories: "inside City limits" ($11.18 base rate plus $2.42 per 100 cubic feet overage), and "outside City limits" ($22.36 base rate plus $4.84 per 100 cubic feet overage). There are no additional distinctions such as user type or category, or meter size. An additional "system replacement fee" (SRF) is billed each month on a flat $2.90 per EDU basis.

With the current rate structure, this yields an average, per inside-City-limits residential account, monthly billing of $29.79. If computed on a per EDU basis (3,264 EDUs, 4,617.7 gallons, 617.3 cubic feet), the result is $26.82 per EDU per month.

Aside from the fairly nominal base rate, the City's rate structure reflects a flat rate per volume basis. This has probably contributed to the lower per capita water usage since customers can readily see conservation efforts in the form of lower water bills. In general, such a rate structure is less reliable in providing stable revenue generation because of the large amount of control available to the individual accounts.

Water rates should be simple, sufficient, and fair (equitable). Brookings' rates are certainly simple to understand and apply, and appear to be sufficient based on a review of current budget documents. "Fairness" is less straightforward - though guidelines exist - and are often based, at least in part, on local perception. A detailed water rate study that includes consideration of alternative rate structures would be needed to evaluate the "fairness" issue in any kind of detail.

The following table includes debt service and rate impacts on a per EDU basis for projects funded through the programs identified in the Plan, plus a computation using a 6.5% interest rate. Programs generally have a maximum per project loan, so computations for loans in excess of this amount are omitted in the table. Very large projects often require funding through multiple sources; rate impacts for multiple funding sources are simply added together.

Note: *The table is for general planning purposes only. Actual interest rates, terms, and availability of funds through any given source may vary and are not locked in until an offer of funding is accepted by the City.*

Debt Service and Rate Impacts (per EDU basis)

	Annual Debt Service	Monthly Per EDU Rate Increase	Annual Debt Service	Monthly Per EDU Rate Increase	Annual Debt Service	Monthly Per EDU Rate Increase	Annual Debt Service	Monthly Per EDU Rate Increase
Interest Rate (%):	**2.50**		**3.65**		**4.56**		**6.5**	
Term (years):	**40**		**25**		**25**		**25**	
Reserve (%):	**10**							
EDUS:		**5090**		**5090**		**5090**		**5090**
Loan Total ($)								
$1,000,000	**$43,819.86**	**$0.72**	$61,665.89	$1.01	**$67,856.14**	**$1.11**	$81,981.48	$1.34
$2,000,000	**$87,639.71**	**$1.43**	$123,331.79	$2.02	**$135,712.27**	**$2.22**	$163,962.96	$2.68
$3,000,000	**$131,459.57**	**$2.15**	$184,997.68	$3.03	**$203,568.41**	**$3.33**	$245,944.44	$4.03
$4,000,000	**$175,279.43**	**$2.87**	$246,663.58	$4.04	**$271,424.54**	**$4.44**	$327,925.92	$5.37
$5,000,000			$308,329.47	$5.05	**$339,280.68**	**$5.55**	$409,907.41	$6.71
$6,000,000			$369,995.37	$6.06	**$407,136.81**	**$6.67**	$491,888.89	$8.05
$7,000,000					**$474,992.95**	**$7.78**	$573,870.37	$9.40
$8,000,000					**$542,849.08**	**$8.89**	$655,851.85	$10.74
$9,000,000					**$610,705.22**	**$10.00**	$737,833.33	$12.08
$10,000,000					**$678,561.36**	**$11.11**	$819,814.81	$13.42

IMPLEMENTATION

Capital improvements can be implemented over the planning period according to the nature of the projects, the relative prioritization of the project, and other financial and practical considerations that the City may have. Several of the projects, the water supply project in particular, are high priority and should be addressed as soon as practicable. Because of the high costs, funding agency participation will likely be needed. Once the City has determined which projects to include, the City should contact IFA to set up a One- Stop Meeting in Salem to discuss potential project funding. Representatives of potential funding agencies attend the meeting and can assist in developing an optimal funding approach.

Class 3. Materials that in themselves are capable of *detonation* or of explosive decomposition or explosive reaction but which require a strong initiating source or which must be heated under confinement before initiation. This class includes materials that are sensitive to thermal or mechanical shock at elevated temperatures and pressures.

Class 2. Materials that in themselves are normally unstable and readily undergo violent chemical change but do not detonate. This class includes materials that can undergo chemical change with rapid release of energy at *normal temperatures and pressures*, and that can undergo violent chemical change at elevated temperatures and pressures.

Class 1. Materials that in themselves are normally stable but which can become unstable at elevated temperatures and pressure.

UNWANTED FIRE. A fire not used for cooking, heating or recreational purposes or one not incidental to the normal operations of the property.

USE (MATERIAL). Placing a material into action, including solids, liquids and gases.

VAPOR PRESSURE. The pressure exerted by a volatile fluid as determined in accordance with ASTM D 323.

[M] VENTILATION. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

VESSEL. A motorized watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation. Nontransportation vessels, such as houseboats and boathouses, are included in this definition.

VISIBLE ALARM NOTIFICATION APPLIANCE. A notification appliance that alerts by the sense of sight.

WATER-REACTIVE MATERIAL. A material that explodes; violently reacts; produces flammable, toxic or other hazardous gases; or evolves enough heat to cause autoignition or ignition of combustibles upon exposure to water or moisture. Water-reactive materials are subdivided as follows:

Class 3. Materials that react explosively with water without requiring heat or confinement.

Class 2. Materials that react violently with water or have the ability to boil water. Materials that produce flammable, toxic or other hazardous gases, or evolve enough heat to cause autoignition or ignition of combustibles upon exposure to water or moisture.

Class 1. Materials that react with water with some release of energy, but not violently.

WET-CHEMICAL EXTINGUISHING AGENT. A solution of water and potassium-carbonate-based chemical, potassium-acetate-based chemical or a combination thereof, forming an extinguishing agent.

WET FUELING. See "Mobile Fueling."

WET HOSING. See "Mobile Fueling."

WHARF. A structure at the shoreline, having a platform built alongside and parallel to a body of water that may have an open deck or provided with a superstructure.

WILDFIRE RISK AREA. Land that is covered with grass, grain, brush or forest, whether privately or publicly owned, which is so situated or is of such inaccessible location that a fire originating upon it would present an abnormally difficult job of suppression or would result in great or unusual damage through fire or such areas designated by the *fire code official*.

[B] WINDER. A tread with nonparallel edges.

[B] WINERY. A facility used for the primary commercial purpose of processing grapes or other fruit products to produce wine or cider having a 16-percent or less alcohol content by volume, including all areas used for the production, storage, distribution and sale of such wine or cider, including crushing, fermenting in wood or steel barrels, blending, aging, bottling, tasting rooms with an occupant load of 299 or less, warehousing, shipping, and retailing of wine, cider, and incidental items relating to wine and cider and all associated administrative functions.

WIRELESS PROTECTION SYSTEM. A system or a part of a system that can transmit and receive signals without the aid of wire.

WORKSTATION. A defined space or an independent principal piece of equipment using HPM within a fabrication area where a specific function, laboratory procedure or research activity occurs. *Approved* or *listed* hazardous materials storage cabinets, flammable liquid storage cabinets or gas cabinets serving a workstation are included as part of the workstation. A workstation is allowed to contain ventilation equipment, fire protection devices, detection devices, electrical devices and other processing and scientific equipment.

[B] YARD. An open space, other than a *court*, unobstructed from the ground to the sky, except where specifically provided by the *International Building Code*, on the lot on which a building is situated.

ZONE. A defined area within the protected premises. A zone can define an area from which a signal can be received, an area to which a signal can be sent or an area in which a form of control can be executed.

ZONE, NOTIFICATION. An area within a building orfacility covered by notification appliances which are activated simultaneously.

HUYCKE O'CONNOR JARVIS, LLP

MEMORANDUM

TO: **Donna Colby-Hanks**
City of Brookings
898 Elk Drive
Brookings, Oregon 97415
dcolbyhanks@brookings.or.us

FROM: **Dan O'Connor**
Huycke O'Connor Jarvis, LLP
823 Alder Creek Drive
Medford, Oregon 97504
dano@medfordlaw.net

RE: **File No. ANX-1-14 (Remand)**

DATE: **March 18, 2015**

Dear. Ms. Colby-Hanks:

This firm represents Mahar/Tribble, LLC, an Oregon limited liability company, being the applicant ("the Applicant") in the above-stated land use matter. The purpose of this Memorandum is to submit evidence into the record concerning the availability of domestic water relative to capacity for potential development of the subject property. Applicant acknowledges that evidence and testimony must be limited to this specific issue.

A. Background.

Applicant is the owner of certain real property commonly known as Township 40 South, Range 13 West, Section 32D, Tax Lots 1500 and 2000 ("the subject property"). The land use application included: (a) annexation of the subject property into city limits; (b) amending the comprehensive plan designation for the subject property from Commercial/Industrial to Residential; and (c) changing the zoning designation of the subject property from Commercial/Industrial to Two-Family Residential (R-2) ("the Application"). A public hearing was held before the City of Brookings City Council on September 8, 2014. The City Council approved the Application pursuant to the adoption of Ordinance 14-O-738 ("the Decision"). The Decision was appealed to the Land Use Board of Appeals (LUBA). In a *Final Opinion and Order* dated January 6, 2015, LUBA remanded the Decision to the City for additional findings addressing the following: (a) municipal water capacity to

serve the future development of the subject property; and (b) Statewide Planning 16 (Estuarine Resources) ("the LUBA Remand").

The subject property is approximately 13.33 acres in size and is undeveloped. The subject property fronts on the North Bank Chetco River Road right-of-way. The Decision includes the annexation of the aforementioned County right-of-way into the City. Municipal water is available to the subject property pursuant to a 14" water main located in the North Bank Chetco River Road right-of-way. Pursuant to the Application, the proposed zoning of the subject property will be Two-Family Residential (R-2). As asserted during the proceedings before the Planning Commission and City Council, the maximum development potential for the subject property is 59 residential units.

B. Availability of Water Relative to Capacity.

As set forth above, the maximum potential number of dwelling units is 59. The U.S. Geological Survey estimates that in-house use averages between 80 to 100 gallons of water per day for each person. The largest household use is flushing toilets followed by showers and baths. Oregon Water Resources Department, *Water Well Owner's Handbook*, March, 2010, Pg. 10. The foregoing is consistent with the City of Brookings Water Master Plan Update, April, 2014 (Water Plan), which states the average gallons per capita per day usage to be 77.8 gallons. Water Plan, Pg. ES-1.

The average household size in the City is just under 2.5 persons pursuant to the Water Plan. Consequently, 59 units would result in approximately 148 occupants of the subject property (59 x 2.5 = 147.5) for an approximate total daily water usage of 14,800 gallons. Pursuant to Loree Pryce, the City's Public Works/Development Services Director, the City's municipal water system has a current capacity of 2.1 million gallons per day. In 2014, the City's average annual water demand was 0.951 million gallons per day with a peak day (August 18, 2014) usage of 1.847 million gallons per day. The addition of the 59 dwelling units should increase the average daily usage to approximately 0.966 million gallons per day and the peak day usage to 1.862 million gallons per day. It is important to note that the average annual rainfall in the City is approximately 75 inches. Consequently, no significant irrigation use of domestic water is anticipated for landscaping. Therefore, the municipal water system has capacity to serve the future development of the subject property relative to capacity.

Furthermore, Ms. Pryce confirmed that the existing 14" water main located in the North Bank Chetco River Road right-of-way may be utilized to provide water service to the subject property, as developed. In particular, Ms. Pryce confirmed that the aforementioned water main has more than enough capacity for the development of the subject property (i.e. 59 residential units).

Please do not hesitate to contact me if you have any questions, comments or concerns regarding this matter. Your attention to this matter is greatly appreciated.

HUYCKE O'CONNOR JARVIS, LLP

DANIEL O'CONNOR, OSB No. 950444

City of Brookings

PUBLIC WORKS/DEVELOPMENT SERVICES DEPARTMENT

898 Elk Drive, Brookings, OR 97415

(541) 469-1138, Fax (541) 469-3650, TTY (800) 735-1232

March 27, 2015
Revised the March 10, 2015 letter per comments on occupancy

Dan O'Connor
Huycke O'Connor Jarvis, LLP
823 Alder Creek Drive
Medford, Oregon 97504
dano@medfordlaw.net

Re: LUBA Remand for Mahar/Tribble Development

Dear Dan,

Please refer to the following responses to the questions you presented in the March 10, 2014 letter to City of Brookings.

Q1. How much water does a residential dwelling unit generally use on a daily basis?

Response: The current water master plan adopted in 2014 states 77.8 gallons per capita day (gpcd) for fiscal year 2011-12 evaluation.

2. How much water do you anticipate a fully developed 59-unit residential development would use on a daily basis?

Response: A conservative number representing an average single family residential water use value is 100 gpcd for a household. The average household occupancy is roughly 2.5 people per household in Brookings, Oregon. Therefore 59-units would use ((2.5x59,000x100)/1exp6)) or 0.015 million gallons per day (MGD) on average.

3. Does the City have sufficient capacity to serve the anticipated 59-unit residential development relative to the capacity of the City's municipal water system?

Response: Yes, the City's 12" and 14" transmission main and distribution pumps are capable of conveying the additional demand of 0.015 MGD or to this development.

4. What is the City's current municipal water capacity in terms of providing water on a daily basis?

Response: The water distribution pumps operate at a maximum of 2.1 MGD at their current settings.

5. What is the current average citywide daily water usage? Water use varies throughout the year.
Response: In 2014, the City's average annual water demand was 0.951 MGD with a peak demand the month of August 18, 2014 of 1.847 MGD for the entire City wide water consumption.

6. May future development on the subject property utilize the 14" water main located in the adjacent right-of-way?
Response: Yes, the 14" water main can be utilized for water service to the development site.

7. Is the 14" water main of sufficient size to serve the potential future development of the subject property relative to other existing users of said water main?

Response: Yes, the 14" water main has more than enough capacity for this development.

8. Opponents of the Application have indicated that the City has insufficient water to serve the subject property. The foregoing allegation is based on an assertion that the City has "curtailed" or "denied" water supplies to the City golf course (Salmon Run Golf Course). Is aforementioned allegation accurate? Please explain.

Response: The City has never provided or denied water service to teh Saalmon Run Golf Course. There is no relationship between Salmon Run Golf Course and the City's water supply. Salmon Run Golf Course is on the opposite side of the Chetco River from the City's water system. The City has explored opportunities to provide water to Salmon Run Golf Course by establishing a new point of diversion on the opposite side of the river, or extending water service from Harbor Water District who is the water purveyor on the south side of the Chetco River. As of this writing, the operators of Salmon Run Golf Course have stated that water service from the City is not needed.

If you have any further questions in this subject, please feel free to contact me at (541)469-1138.

Sincerely,

Loree Pryce, PE
Public Works/Development Services Director

Attachment(s): Letter dated March 10, 2014

Cc: City Manager
Planning Manager
Public Works Supervisor

HUYCKE O'CONNOR JARVIS, LLP

MEMORANDUM

TO: **Loree Pryce, PE**
Public Works and Development Services Director
City of Brookings
898 Elk Drive
Brookings, Oregon 97415
lpryce@brookings.or.us

FROM: **Dan O'Connor**
Huycke O'Connor Jarvis, LLP
823 Alder Creek Drive
Medford, Oregon 97504
dano@medfordlaw.net

RE: **File No. ANX-1-14**

DATE: **March 10, 2015**

Dear. Ms. Pryce:

This firm represents Mahar/Tribble, LLC, an Oregon limited liability company, being the applicant ("the Applicant") in the above-stated land use matter. Applicant is the owner of certain real property commonly known as Township 40 South, Range 13 West, Section 32D, Tax Lots 1500 and 2000 ("the subject property"). The purpose of this Memorandum is to ascertain the availability of City to serve the potential future development of the subject property.

A. Background.

The land use application included: (a) annexation of the subject property into city limits; (b) amending the comprehensive plan designation for the subject property from Commercial/Industrial to Residential; and (c) changing the zoning designation of the subject property from Commercial/Industrial to Two-Family Residential (R-2) ("the Application"). A public hearing was held before the City of Brookings City Council on September 8, 2014. The City Council approved the Application pursuant to the adoption of Ordinance 14-O-738 ("the Decision"). The Decision was appealed to the Land Use Board of Appeals (LUBA). In a *Final Opinion and Order* dated January 6, 2015, LUBA remanded the Decision to the City for

additional findings addressing the following: (a) municipal water capacity to serve the future development of the subject property; and (b) Statewide Planning 16 (Estuarine Resources) ("the LUBA Remand").

The subject property is approximately 13.33 acres in size and is undeveloped. The subject property fronts on the North Bank Chetco River Road right-of-way. The Decision includes the annexation of the aforementioned County right-of-way into the City. Municipal water is available to the subject property pursuant to a 14" water main located in the North Bank Chetco River Road right-of-way. Pursuant to the Application, the proposed zoning of the subject property will be Two-Family Residential (R-2). As asserted during the proceedings before the Planning Commission and City Council, the maximum development potential for the subject property is 59 residential units.

B. Questions.

In order to comply with the LUBA Remand instructions concerning municipal water capacity, will you please answer the following questions:

1. How much water does a residential dwelling unit generally use on a daily basis?

2. How much water do you anticipate a fully developed 59-unit residential development would use on a daily basis?

3. Does the City have sufficient capacity to serve the anticipated 59-unit residential development relative to the capacity of the City's municipal water system?

4. What is the City's current municipal water capacity in terms of providing water on a daily basis?

5. What is the current average citywide daily water usage?

6. May future development on the subject property utilize the 14" water main located in the adjacent right-of-way?

7. Is the 14" water main of sufficient size to serve the potential future development of the subject property relative to other existing users of said water main?

8. Opponents of the Application have indicated that the City has insufficient water to serve the subject property. The foregoing allegation is based on an assertion that the City has "curtailed" or "denied" water supplies to the City golf course (Salmon Run Golf Course). Is aforementioned allegation accurate? Please explain.

Your attention to this matter is greatly appreciated.

HUYCKE O'CONNOR JARVIS, LLP

2. Statewide Planning Goal 16 (Estuarine Resources).

The Chetco River Estuary Boundary runs along the eastern boundary of the subject property (*See Record*, 604).[1] Pursuant to the LUBA Remand, findings assessing potential impacts to estuarine resources and measures to prevent such impacts are required. As directed by LUBA, the relevant provisions of Statewide Planning Goal 16 are set forth as follows:

> *1. Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow-lane disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.*
>
> *The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:*
> *a. The type and extent of alterations expected;*
> *b. The type of resource(s) affected;*
> *c. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and*
> *d. The methods which could be employed to avoid or minimize adverse impacts.*
> Goal 16; Implementation Requirements 1.

The approval of the Application and any resulting future development of the subject property will have no significant adverse impact on Chetco River estuarine resources. The Estuary Boundary is the line of Mean Higher High Water (MHHW). The Estuary Boundary is delineated on maps prepared by Donald G. Porior, an Oregon registered professional engineer (*See Record*, 604-606). There has been no dispute concerning the accuracy of the Estuary Boundary mapping and, therefore, mapping is an accurate representation of the Estuary Boundary. The resource to be protected is the Chetco River estuary.

The approval of the Application will not alter the Chetco River estuarine ecosystem and that the estuary resources shall be protected. First, no activities contemplated by Goal 16 are proposed, anticipated or probable as a result of the approval. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow-lane disposal of dredged material or other activities that could affect the estuary's physical processes or biological resources. It is important to note that the fill being placed on the subject property is based upon a CLOMR-F previously issued by FEMA and is not within the scope of the Council's review of the Application. In any event, no fill deposited on the subject property will be placed within the Estuary Boundary.

No future development on the subject property will occur within the Estuary Boundary.

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[1] Record references are to the LUBA Record.

Furthermore, a riparian buffer between the Estuary Boundary and future development on the subject property shall be maintained providing protection from possible adverse impacts generally associated with residential development (*See Record*, 604). The application of pesticides and herbicides shall not be allowed within the riparian buffer. Future development of the subject property shall be served by municipal water and sewer services. Accordingly, no water intake or effluent discharge into the estuarine resource shall occur. Storm water conveyance shall be conducted in accordance with City standards and other applicable agencies minimizing potential adverse impacts on the estuarine resource. The maintenance of the riparian buffer along the Estuary Boundary will preserve the aesthetic and recreational characteristics of the estuarine resource. Navigational uses of the estuary will not be impacted by the approval of the Application.

The other potential use in conjunction with the estuary is the stockpiling of dredged materials. Specifically, Goal 16 of the City's Comprehensive Plan (BCP) provides for the protection of potential areas for the stockpiling of dredged materials ("DMD Sites"). A map depicting the DMD Sites is included in the record. Goal 16 of the BCP relating to DMD Sites is implemented pursuant to Section 17.72.050 of the City of Brookings Land Development Code (BLDC), which states as follows:

> ***17.72.050 Priority dredge material disposal sites (DMD).***
>
> *A. Purpose. The purpose of DMD subareas in marine activity zones is to protect essential DMD sites from incompatible and preemptive uses that could limit their ultimate use for deposit of dredge material, and thereby limit the Port of Brookings and the Corps of Engineers from maintaining a navigable channel in the Chetco.*
>
> *B. For subareas designated DMD, the following standards shall apply.*
>
> *1. Structural improvements (e.g., construction of buildings) or other alteration of topography that would preempt use of the site for the amount of DMD planned will be prohibited until such time as alternative sites providing equivalent capacity to meet five-year disposal needs (within convenient reach of planned dredging projects) have been identified; and these alternate sites have been protected by plan amendment.*

Based on mapping provided by Applicant's engineer, DMD #3 is located at the extreme southern portion of the subject property adjacent to the Snug Harbor inlet. In order to preserve and protect DMD #3, Applicant has stipulated to maintain the extreme southern portion of the subject property identified on the Site Map (Record 604) as the "Area Established in Comprehensive Plan as DMD 3" as open space. Consequently, no future development will occur in this protected area consistent with BLDC 17.72.050 and Goal 16.

In addition to the foregoing, the subject property is currently zoned Commercial (C-1)

and Industrial (I), which allows for a more intensive use of the subject property than the proposed Two-Family Residential (R-2) zoning designation. Thus, the proposed downzoning of the subject property reduces the potential for adverse impacts on the estuarine resource in that industrial uses are often incompatible with the protection of environmental resources.

Any future restoration of Ferry Creek could potentially impact estuarine resources but there are sufficient safeguards in place to prevent adverse impacts as a result of such work. Ferry Creek traverses the subject property entirely within a pipe. Community stakeholders have expressed a desire that the Ferry Creek streambed be restored on the subject property. The owner of the subject property has also expressed a willingness to restore the streambed. However, it is important to note that there is no requirement that the owner restore the streambed. Furthermore, the restoration of the streambed is not required for the development of the subject property. In short, the restoration of the Ferry Creek streambed on the subject property would be a significant environmental benefit but such work must be conducted prudently to avoid adverse impacts on estuarine resources. The Applicant testified that no such work would occur without the appropriate review and permit(s) from the participating state and federal agencies. Specifically, such work will require a joint permit from the Army Corp of Engineers ("the Corp") and the Oregon Department of State Lands (DSL). The aforementioned permit process requires Endangered Species Act (ESA) compliance review by the National Marine Fisheries Services (NMFS) as well as review by the Oregon Department of Fish and Wildlife (ODFW). The aforementioned extensive review process will ensure the protection of the estuarine resource in the event the Ferry Creek stream restoration occurs.

Based on the foregoing, there is substantial evidence in the record demonstrating that the Statewide Planning Goal 16 Estuarine Resources will not be adversely impacted from the approval of the Application and future development allowed consistent with the approval. Furthermore, the area designated for future development on the subject property is sufficiently buffered from the Estuary Boundary to mitigate unforeseen development impacts and to maintain the recreational and aesthetic characteristics of the estuary. Also, estuary dependent resource sites, in this case DMD #3, shall be preserved consistent with Goal 16 of the BCP.

BEFORE THE CITY COUNCIL FOR
THE CITY OF BROOKINGS, COUNTY OF CURRY,
STATE OF OREGON

In the matter of Planning Commission File No. ANX-1-14/Remand; a request for approval of the Applicant's response to the issues remanded by the Land Use Board of Appeals, LUBA No. 2014-087 for approval of annexation, Mahar/Tribble, LCC, applicant.	))))))	**Final ORDER and Findings of Fact**

ORDER approving the materials submitted in response to the issues remanded by the Land Use Board of Appeals (LUBA), in the appeal of the City's approval the annexation of approximately 13.33 acres of land located in Curry County, Oregon, and commonly known as Township 40 South, Range 13 West, Section 32D, Tax Lots 1500 and 2000 ("the subject property"), being located adjacent to the eastern boundary of the North Bank Chetco River Road right-of-way, and approximately 3,294 feet of the North Bank Chetco River Road right-of-way from the city limits boundary to the subject property. The location of the Shoreland Boundary on the subject property being previously amended pursuant to the Final Order of ANX-1-14 and affirmed by the Land Use Board of Appeals.

WHEREAS:

1. Applicant submitted a petition/land use application with the City of Brookings, Oregon ("the Application").

2. The Application consisted of four (4) components: (a) annexation of the subject property into city limits; (b) amending the comprehensive plan designation for the subject property from Commercial/Industrial to Residential; (c) changing the zoning designation of the subject property from Commercial/Industrial to Two-Family Residential (R-2); and (d) amending the Chetco River Estuary Shorelands Boundary along the subject property's southeastern boundary.

3. A public hearing for the Application was held before the City of Brookings Planning Commission on August 5, 2014. The Planning Commission voted to recommend approval of the Application to the Brookings City Council.

4. A public hearing was held before the Brookings City Council ("the Council") on September 8, 2014. The Council approved the Application pursuant to the Final Order and adoption of Ordinance 14-O-738 ("the Decision"). The Decision was the final decision of the City of Brookings concerning the Application.

5. The Decision was appealed to the Land Use Board of Appeals (LUBA) by Oregon Coast Alliance. In a *Final Opinion and Order* dated January 6, 2015, LUBA remanded the Decision to the City for additional findings addressing the following: (a) municipal water capacity to serve the future development of the subject property; and (b) Statewide Planning Goal 16 (Estuarine Resources) ("the LUBA Remand"). The remainder of the Decision was affirmed by LUBA.

6. Consistent with the LUBA Remand, a public hearing was held on April 13, 2015, before the Council to consider additional testimony and evidence to squarely address the "availability" of domestic water "relative to capacity" for the potential development of the subject property based on the Application. The planning staff presented the Council Agenda Report with recommendations. Oral and written testimony from the public was also presented. The meeting was continued, allowing time for staff to review the comments and respond. On April 27, 2015, following staff's presentation of responses to public comments, rebuttal to the responses was received from the public and the applicant.

7. The LUBA Remand instructions concerning the inadequacy of findings relating to Statewide Planning Goal 16 (Estuarine Resources) are not evidenced based in that there is substantial evidence in the record to support legally sufficient findings. Consequently, no public hearing was held concerning this component of the LUBA Remand.

THEREFORE, IT IS HEREBY ORDERED that the Application is approved consistent with the Decision. Findings and conclusions consistent with the LUBA Remand are set forth as follows:

A. Property Background.

The subject property is approximately 13.33 acres in size and is undeveloped. The subject property is located within the City's Urban Growth Boundary and has a County zoning designation of Commercial (C-1) and Industrial (I). The southern portion of the subject property (Tax Lot 2000) has a "Commercial" Comprehensive Plan designation and the northern portion of the subject property (Tax Lot 1500) has an "Industrial" Comprehensive Plan designation. The extreme southern portion of the subject property, being the area adjacent to Snug Harbor, is designated as Priority Dredge Material Disposal Site #3. The subject property fronts on the North Bank Chetco River Road right-of-way. Municipal water is available to the subject property pursuant to a 14" water main located in the North Bank Chetco River Road right-of-way. Public sewer will be provided to the subject property pursuant to a proposed Infrastructure Financing Agreement between the Applicant and the City ("the Infrastructure Agreement").

The Chetco River runs along the subject property's entire southeastern boundary line. Ferry Creek traverses the subject property but is located entirely within an enclosed culvert. The subject property has been heavily impacted from historical commercial/industrial uses resulting in a significant degradation of the riparian habitat along the Chetco River. Under Curry County's jurisdiction and with Conditional Use Permit (AD-0816) approval, a substantial amount of fill has been placed on the subject property.

The Statewide Planning Goal 16 Chetco River Estuary Boundary ("the Estuary Boundary") is located along the eastern boundary of the subject property. The Estuary Boundary being the line of Mean Higher High Water (MHHW).

C. Standards, Criteria and Findings.

The standards, criteria and findings set forth in this Order are limited consistent with the LUBA Remand. Specifically, the standards and criteria addressed herein are limited to the following: (a) the "availability" of municipal water "relative to capacity" pursuant to BMC 17.144.20(J)(5) and 17.144.030(B); and (b) compliance with Statewide Planning Goal 16 (Estuarine Resources).

1. Domestic Water Capacity.

The Council finds that there is substantial evidence in the record demonstrating that the City's municipal water system has more than sufficient capacity to serve the potential development of the subject property. The Council further finds that there is substantial evidence in the record demonstrating that municipal water is available to the subject property through the 14" water main located in the North Bank Chetco River Road right-of-way. BMC 17.144.20(J)(5) governs annexation application procedures and BMC 17.144.30(B) requires the analysis of annexation impacts on the level of urban services and infrastructure. BMC 17.144.30(B) states as follows:

> *5. Urban services needed and necessary to service the territory proposed to be annexed, including the* ***availability of the same relative to capacity,*** *condition and cost of extension and/or improvement to urban standards and an estimated timeline for any required improvements. City staff will provide written information regarding existing infrastructure and any improvements that would be necessary to serve the territory proposed to be annexed, as well as any other properties within the urban growth area that would also be served by these improvements in the future.*

BMC 17.144.30(B) states as follows:

> *B. An adequate level of urban services and infrastructure to accommodate anticipated future development either is available, or can reasonably be made available. An adequate level of urban services shall be defined as: municipal sanitary sewer, storm drainage, and water service meeting the requirements enumerated in the Brookings public facilities plan and the land development code for provision of these services. The adequacy of these services shall be considered in relation to annexation proposals. If any substandard infrastructure exists within the boundaries of the area proposed for annexation, the city may deny an annexation application.*

As set forth above, the LUBA Remand instructions specifically require findings addressing the "availability" of water "relative to capacity. There is substantial evidence in the record demonstrating that the maximum feasible potential development on the subject property is 59 residential units based on the proposed zoning designation and development constraints (i.e. setbacks, etc.). United States Geological Survey estimates that in-house use averages 80 to 100 gallons of water per day for each person. Oregon Water Resources Department, *Water Well Owner's Handbook*, March, 2010, Pg. 10. The City's adopted Water Master Plan (April, 2014) states the average per capita per day usage to be 77.8 gallons.

Per the 2014 WMP, the water rights at the Ranney Collector (5.57 cfs) are currently used for municipal water production. Currently 1.0 cfs has been temporarily transferred (will expire in 2018) leaving 4.57 cfs available at the Ranney Collector. This equals 2.9 million gallons per day.

The average household size in the City is just under 2.5 persons pursuant to the adopted Water Master Plan. Consequently, 59 units would result in approximately 148 residents to be served (59 x 2.5 = 147.5) for an approximate total daily water usage of 14,800 gallons. Pursuant to Loree Pryce, the City's Public Works/Development Services Director, the City's municipal water system has a current pump distribution capacity of 2.1 million gallons per day. In 2014, the City's average annual water demand was 0.951 million gallons per day with a peak day (August 18, 2014) usage of 1.847 million gallons per day. The addition of the 59 dwelling units should increase the average daily usage to approximately 0.966 million gallons per day and the peak day usage to 1.862 million gallons per day.

The City has water storage in 11 tanks (reservoirs) for 3.43 million gallons. The industry standard for storage is three (3) days of average day demand, which equals 2.7 million gallons plus fire code flow standard of 3,500 gallons per minute for three (3) hours, which equals 0.63 million gallons. The total storage is 3.3 million gallons. The City is at the industry standard storage capacity currently. The Airport Infrastructure Improvement Project will add 500,000 gallons of storage.

It is important to note that the average annual rainfall in the City is approximately 75 inches. The Applicant states that, consequently, no significant irrigation use of domestic water is anticipated for landscaping in conjunction with the residential development of the subject property. Therefore, the municipal water system has capacity to serve the future development of the subject property relative to capacity.

Furthermore, Ms. Pryce confirmed that the existing 14" water main located in the North Bank Chetco River Road right-of-way may be utilized to provide water service to the subject property, as developed. In particular, Ms. Pryce confirmed that the aforementioned water main has more than enough capacity for the development of the subject property (i.e. 59 residential units).

Opponents of the Application have indicated a lack of available municipal water capacity based on alleged water deficiencies involving Salmon Run Golf Course. The Council finds that such a position is unsupported. Specifically, pursuant to the Public Works Director, the City has never provided or denied the Salmon Run Golf Course water. The golf course is on the opposite side of the Chetco River from the City's water system. The City has explored opportunities to provide water to the golf course by establishing a new point of diversion on the opposite side of the river or extending water service from Harbor Water District who provides water on the south side of the river. Furthermore, the current operators of the golf course have indicated that water from the City is not necessary.

2. Statewide Planning Goal 16 (Estuarine Resources).

The Chetco River Estuary Boundary runs along the eastern boundary of the subject property (*See Record*, 604).[1] Pursuant to the LUBA Remand, findings assessing potential impacts to estuarine resources and measures to prevent such impacts are required. As directed by LUBA, the relevant provisions of Statewide Planning Goal 16 are set forth as follows:

> *1. Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow-lane disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.*
>
> *The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:*
> *a. The type and extent of alterations expected;*
> *b. The type of resource(s) affected;*
> *c. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and*
> *d. The methods which could be employed to avoid or minimize adverse impacts.*
> Goal 16; Implementation Requirements 1.

The Council finds that the approval of the Application and any resulting future development of the subject property will have no significant adverse impact on Chetco River estuarine resources. The Estuary Boundary is the line of Mean Higher High Water (MHHW). The Estuary Boundary is delineated on maps prepared by Donald G. Porior, an Oregon registered professional engineer (*See Record*, 604-606). There has been no dispute concerning the accuracy of the Estuary Boundary mapping and, therefore, the Council adopts such mapping as an accurate representation of the Estuary Boundary. The resource to be protected is the Chetco River estuary.

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[1] Record references are to the LUBA Record.

The Council finds that the approval of the Application will not alter the Chetco River estuarine ecosystem and that the estuary resources shall be protected. First, no activities contemplated by Goal 16 are proposed, anticipated or probable as a result of the approval. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow-lane disposal of dredged material or other activities that could affect the estuary's physical processes or biological resources. It is important to note that the fill being placed on the subject property is based upon a CLOMR-F previously issued by FEMA and is not within the scope of the Council's review of the Application. In any event, no fill deposited on the subject property will be placed within the Estuary Boundary.

The Council further finds that no future development on the subject property will occur within the Estuary Boundary. Furthermore, a riparian buffer between the Estuary Boundary and future development on the subject property shall be maintained providing protection from possible adverse impacts generally associated with residential development (*See Record*, 604). The application of pesticides and herbicides shall not be allowed within the riparian buffer. Future development of the subject property shall be served by municipal water and sewer services. Accordingly, no water intake or effluent discharge into the estuarine resource shall occur. Storm water conveyance shall be conducted in accordance with City standards and other applicable agencies minimizing potential adverse impacts on the estuarine resource. The maintenance of the riparian buffer along the Estuary Boundary will preserve the aesthetic and recreational characteristics of the estuarine resource. Navigational uses of the estuary will not be impacted by the approval of the Application.

The other potential use in conjunction with the estuary is the stockpiling of dredged materials. Specifically, the Council finds that Goal 16 of the City's Comprehensive Plan (BCP) provides for the protection of potential areas for the stockpiling of dredged materials ("DMD Sites"). A map depicting the DMD Sites is included in the record. Goal 16 of the BCP relating to DMD Sites is implemented pursuant to Section 17.72.050 of the City of Brookings Land Development Code (BLDC), which states as follows:

> ***17.72.050 Priority dredge material disposal sites (DMD).***
>
> *A. Purpose. The purpose of DMD subareas in marine activity zones is to protect essential DMD sites from incompatible and preemptive uses that could limit their ultimate use for deposit of dredge material, and thereby limit the Port of Brookings and the Corps of Engineers from maintaining a navigable channel in the Chetco.*
>
> *B. For subareas designated DMD, the following standards shall apply.*
>
> *1. Structural improvements (e.g., construction of buildings) or other alteration of topography that would preempt use of the site for the amount of DMD planned will be prohibited until such time as alternative sites providing equivalent capacity to meet five-year disposal needs (within convenient reach of planned dredging projects) have been identified; and these alternate sites have been protected by plan amendment.*

Based on mapping provided by Applicant's engineer and accepted by Council, DMD #3 is located at the extreme southern portion of the subject property adjacent to the Snug Harbor inlet. In order to preserve and protect DMD #3, the Applicant has stipulated to maintain the extreme southern portion of the subject property identified on the Site Map (Record 604) as the "Area Established in Comprehensive Plan as DMD 3" as open space. Consequently, no future development will occur in this protected area consistent with BLDC 17.72.050 and Goal 16.

In addition to the foregoing, the Council acknowledges that the subject property has a current Curry County zoning of Commercial (C-1) and Industrial (I), which allows for a more intensive use of the subject property than the proposed Two-Family Residential (R-2) City zoning designation. Thus, the Council finds that the proposed downzoning of the subject property reduces the potential for adverse impacts on the estuarine resource in that industrial uses are often incompatible with the protection of environmental resources.

The Council further finds that any future restoration of Ferry Creek could potentially impact estuarine resources but there are sufficient safeguards in place to prevent adverse impacts as a result of such work. Ferry Creek traverses the subject property entirely within a pipe. Community stakeholders have expressed a desire that the Ferry Creek streambed be restored on the subject property. The owner of the subject property has also expressed a willingness to restore the streambed. However, it is important to note that there is no requirement that the owner restore the streambed. Furthermore, the restoration of the streambed is not required for the development of the subject property. The Council believes that the restoration of the Ferry Creek streambed on the subject property would be a significant environmental benefit but recognizes that such work must be conducted prudently to avoid adverse impacts on estuarine resources. The Applicant testified that no such work would occur without the appropriate review and permit(s) from participating state and federal agencies. Specifically, such work will require a joint permit from the Army Corp of Engineers ("the Corp") and the Oregon Department of State Lands (DSL). The aforementioned permit process requires Endangered Species Act (ESA) compliance review by the National Marine Fisheries Services (NMFS) as well as review by the Oregon Department of Fish and Wildlife (ODFW). The Council finds that the aforementioned extensive review process will ensure the protection of the estuarine resource in the event the Ferry Creek stream restoration occurs.

Based on the foregoing, the Council finds that there is substantial evidence in the record demonstrating that the Statewide Planning Goal 16 Estuarine Resources will not be adversely impacted from the approval of the Application and future development allowed consistent with the approval. Furthermore, the area designated for future development on the subject property is sufficiently buffered from the Estuary Boundary to mitigate unforeseen development impacts and to maintain the recreational and aesthetic characteristics of the estuary. Also, estuary dependent resource sites, in this case DMD #3, shall be preserved consistent with Goal 16 of the BCP.

D. Conditions of Approval (from original Final Order approval)

1. Prior to approval of any new development permits or final plat approval on the subject property, the Applicant is required to record a deed declaration against the subject properties that acknowledges the existence of the Infrastructure Financing Agreement between the parties and its essential role in determining sewer feasibility to achieve municipal zoning. The Deed Declaration shall state that the existence of the Infrastructure Financing Agreement between the City and the Mahar/Tribble LLC was essential in approving the municipal zoning for the property by determining the provision of sewer was feasible and shall state that the City is under no obligation to extend sewer in a manner other than specified in the terms of the Infrastructure Financing Agreement.

2. Prior to issuance of any development permits or final plat approval, the owners must furnish the City of Brookings with a legal description prepared by a registered professional land surveyor that describes Shoreland Boundary as approved herein for the entire length of the subject properties and the boundary shall be staked at 50-foot intervals by the surveyor who prepared the legal descriptions. Notwithstanding the foregoing, the staking of the Shoreland Boundary on that portion of the subject property included within the approved FEMA Conditional Letter of Map Revision shall be completed contemporaneously with the completion of the FEMA Letter of Map Revision.

3. Development on the site is required to comply with the following Hazard Mitigation conditions:

a. Prior to issuance of any development permits or final plat approval, Applicant will provide a statement from an Oregon Registered Engineering Geologist that the fill placed four years ago satisfies the recommended 95% compaction and is appropriate for residential and street construction.

b. Prior to issuance of any development permits or final plat approval, Applicant will provide a statement from an Oregon Registered Engineering Geologist that any new fill will satisfy the recommended 95% compaction and is appropriate for residential and street construction.

c. Prior to issuance of any development permits or final plat approval on the portion of the subject property located within the existing 100-year floodplain, Applicant will complete the Letter of Map Revision process with FEMA that establishes the revised 100-year floodplain elevations and the floodway boundary for the site.

d. In the event any future development is to be located within the 100-year floodplain, topographic information will be provided for development permits that demonstrate the ground elevation building pads have been raised 1-foot above the 100-year floodplain elevation.

e. A report from an Oregon Registered Engineer or an Oregon Registered Engineering Geologist shall be provided with all building plans for residential foundations at the time of building plan submittal to the City that explain how the proposed foundation designs are consistent with Recommendations No. 4 through 6 set forth on Page 7 of the Geologic Hazard Evaluation Report dated February 29, 2008, and prepared by Garcia Consultants. A copy of the aforementioned report being contained in the record.

LET IT FURTHER BE OF RECORD that City Council APPROVED the materials submitted in response to the issues of the remand based on the evidence in the record and the findings of fact.

Dated this 27th day of April, 2015.

_____
Ron Hedenskog, Mayor

ATTEST:

_____
Donna Colby-Hanks, Planning Manager